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सं. 6] नई दिल्ली, फरवरी 5—फरवरी 11, 2006, शनिवार/माघ 16—माघ 22, 1927

No. 6] NEW DELHI, FEBRUARY 5—FEBRUARY 11, 2006, SATURDAY/MAGHA 16—MAGHA 22, 1927

इस भाग में खिल पृष्ठ संख्या दी जाती है जिससे कि यह पृष्ठक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 30 जनवरी, 2006

आ. अ. 23.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग वर्ष 2004 की निर्वाचन अर्जी संख्या 15 में मध्य प्रदेश उच्च न्यायालय जबलपुर के तारीख 10-11-2005 के आदेश को एतद्वारा प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[संख्या 82/म.प्र.-लो.स./(15/04)]

आदेश से

एस. के. कौरा, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 30th January, 2006

O.N. 23.—In pursuance of Section 106 of Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement/order of the High Court of Jabalpur dated 10-11-2005 in Election Petition No.15/04.

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (MP)

ELECTION PETITION NO. 15 OF 2004

PETITIONER : Prahlad Singh Patel,
Aged about 43 years,
Son of Shri Mulam Singh Patel,
Resident of Bose Ward, Gotegaon
District NARSINGHPUR (MP).

VERSUS

RESPONDENT : Kamal Nath,
Aged about 58 years,
Son of Shri Mahendra Nath, Cabinet
Minister for Commerce & Industries,
R/O:—

1. 1, Tuglak Road, New Delhi.
2. 47, Friends Colony, New Delhi.
3. Room No. 146, Udyog Bhawan,
Ministry of Commerce & Industries,
'Udyog Bhawan',
New Delhi.

**ELECTION PETITION UNDER SECTION 81 READ
WITH SECTION 100 OF
REPRESENTATION OF PEOPLE ACT, 1951**

The petitioner begs to submit as under :—

1. That by this petition, the petitioner calls in question the election of the respondent Shri Kamal Nath to 2004 Lok Sabha from Constituency No. 16 of Chhindwara District.

2. That there were numerous candidates who have contested the election from the said constituency. The nominations were to be filed from 8-4-2004 to 15-4-2004. The polling was scheduled for 05-05-2004. The petitioner contested on 'Bhartiya Janta Party' ticket while the respondent contested on 'Indian National Congress Party' ticket. The total 7,52,439 votes were cast. 3,08,563 votes were polled in favour of the respondent. 2,44,855 votes were cast in favour of the petitioner. The respondent was declared elected. The petitioner was thus the closest rival. A copy of the election result is filed herewith as Annexure-P/1 (Presented at 5.45 P.M. on 26-6-2004 by Shri Prahlad Singh S/o Shri Mulam Singh, identified as petitioner by Shri Shailendra Verma Advocate. It is properly drawn up, apparently with in time and properly stamped. It is accompanied by requisite No. of spare copies, list of documents, registered address, P.F. and receipt of security deposit of Rs. 2000 only. One copy of C. D. (article P-17) for the purposes of R R (J-2) of PT-in short.)

**THE HIGH COURT OF MADHYA PRADESH :
JABALPUR.**

ELECTION PETITION NO. 15/2004

PETITIONER : Prahlad Singh Patel,
Aged about 43 years,
Son of Shri Mulam Singh Patel,
Resident of Bose Ward, Gotegaon
District NARSINGHPUR (MP).

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3. Room No. 146, Udyog Bhawan,
Ministry of Commerce and
Industries, 'Udyog Bhawan',
New Delhi.

Whether approved
for reporting ? : Yes

Whether reporters of
Local Papers may : Yes
be allowed to see the order ?

For the Petitioner : Shri N.S. Kale, Senior
Counsel with Shri
Shailendra Verma,
Advocate.

For the Respondent : Shri V. K. Tankha, Senior
Counsel with Shri P. D.
Gupta,
Advocate.

ORDER

Reserved on : 26-10-2005

Passed on : 10-11-2005

This order shall dispose of the application under Order 6 Rule 16 of the CPC, (I.A. No. 20/2004) and an application under Order 7 Rule 11 of the CPC read with Sections 82 and 83 of The Representation of People Act, 1951 (henceforth, 'the Act' for short) (I.A. No. 19/2004). Both the applications have been filed by the respondent.

2. Petitioner has filed an election petition questioning the election of respondent to Lok Sabha Parliamentary Constituency No. 16, Chhindwara on the ground of commission of corrupt practice as defined by Section 123 (6) of the Act. The relief sought is to declare the election of respondent void under Section 100 of the Act. It is alleged in the election petition that numerous candidates contested the election for the said constituency. Nominations were to be filed from 8-4-2004 to 15-4-2004. The polling was scheduled on 5-5-2004. The petitioner contested on Bhartiya Janta Party ticket while the respondent contested on Indian National Congress ticket. The respondent was declared elected. The petitioner was the closest rival.

3. The petitioner has averred that the respondent incurred expenditure in contravention of Section 77 of the Act. The maximum amount of expenditure that has been prescribed is Rs. 25 lac. It is alleged that the respondent filed his nomination papers on 15-4-2004. For the purpose of election campaigning, he had hired Helicopter Bell 407 on 27-4-2004. The period for which it was hired was till the election results were declared on 13-5-2004. The petitioner complained to the Returning Officer, Chhindwara that the respondent be prevented from making use of helicopter hired by him as it would result in an unequal fight between the petitioner and the respondent. It is also pleaded by the petitioner that even before filing his nomination form on 15-4-2004 the respondent started campaigning from 9-4-2004 so that the expenses incurred on the helicopter for the purpose of election may not be counted towards the expenses of election as specified in Section 77 of the Act. The respondent used to take permission from the Returning Officer for flying and landing the helicopter at

six places while in fact, he used to fly it at 8 to 10 places. The petitioner on 9-4-2004 made a complaint to Returning Officer requesting him to prevent the respondent from using the helicopter. From 15-4-2004 till the date of declaration of the result i.e. 13-5-2004 the helicopter was stationed at Chhindwara. It was used for campaigning.

4. The petitioner also pleaded that an application was made on behalf of Bhartiya Janta Party, Chhindwara to the Chief Election Commissioner, New Delhi on 29-4-2004 stating therein that the respondent is violating the Model Code of Conduct and indulging in unlawful activities. During 15-4-2004 to 13-5-2004 the respondent visited numerous villages using the helicopter hired by him in connection with the election campaign. The helicopter took off and landed 133 times in different villages and the respondent addressed 117 public meetings. The star campaigner, Shri Govinda accompanied the respondent in the helicopter hired by him which took off and landed 14 times. On 30-4-2004 and 1-5-2004 Shri Govinda addressed public meetings. It is alleged in the petition that on 18-4-2004, 19-4-2004, 20-4-2004, 21-4-2004, 22-4-2004, 24-4-2004, 25-4-2004, 26-4-2004, 27-4-2004, 28-4-2004, 29-4-2004, 2-5-2004 and 3-5-2004 the respondent in connection with his election campaign visited 8, 11, 10, 11, 9, 1, 12, 1, 14, 15, 10, 4 and 6 villages respectively in the hired helicopter and addressed public meetings. It is alleged that the police administration maintains record of each take off and landing of helicopter. The petitioner has filed certified copy of details of take off and landing of helicopter on various dates as per annexure P-5, on 24-4-2004 at about 12.30 P.M. without permission and without informing the competent authority the respondent visited village Pandharkhedi in helicopter.

5. The petitioner further averred that according to the aviation standard a helicopter takes about 5 minutes to take off and five minutes for landing. There were total 266 take offs and landings. The total time consumed in take offs and landings comes to 1330 minutes i.e. 22.25 hours. For three hours flying charges of the helicopter is Rs. 1.50 lac. If the helicopter is engaged for the whole day even if it is not used, the minimum charges are Rs. 1.50 lac per day. The respondent had been residing in his Constituency at Kamal Kunj, Shikarpur which is situated at a distance of 6 miles from Chhindwara. The residence was being used as Headquarter for campaigning. A permanent helipad was constructed at Shikarpur. The respondent, on each date stated above, travelled in helicopter from Shikarpur and visited different villages. After campaigning for the whole day the helicopter used to return to Shikarpur. On majority of occasions respondent returned in his helicopter. On 18-4-2004 the helicopter was used for 7 hours. The total amount spent by the respondent for hiring helicopter between 15-4-2004 to 6-5-2004 comes to Rs. 32 lac. The amount has been calculated by the petitioner on the basis of the directions

of Chief Election Officer, Bhopal by letters, Annexures P-12 to P-15. The Returning Officer estimated the expenses for the use of the helicopter at Rs. 13,61,210/- vide annexure P-16. This letter does not include the expenses of take offs and landings which took place without the permission of the Returning Officer.

6. It is alleged in the petition that the respondent used satellite Phone on 4-5-2004 at village Chindi. The Returning Officer had prepared a VCD of this event. The cost of satellite higher frequency mobile phone amounts to Rs. One lac.

7. It is further alleged in the petition that 129 helipads were prepared for landing the helicopter in different villages. The total cost of preparing a helipad comes to Rs. 5,000/- Thus, approximately, a sum of Rs. 6,45,000/- was spent in preparing helipads. As per annexure P-18, the cost for preparation of a helipad comes to Rs. 5,000/- while the respondent has shown total cost of one helipad to be Rs. 310/- only.

8. The Petitioner averred in the petition that the respondent had arranged 117 public meetings, in each of them arrangements for dais, microphones, loudspeakers, furnitures, Pandals, braveries etc. were made. The minimum expenditure of each of such public meetings is about Rs. 4,500/. The petitioner has estimated the cost of holding public meetings to Rs. 5,85,000/. It is also the case of the petitioner that 12 public meetings were arranged for the star campaigner also. The total cost of such meetings comes to Rs. 3 lac. It is alleged in the petition that the respondent deliberately suppressed the actual expenses incurred by him and filed incorrect returns with regard to the expenses. The total expenses shown by him in the statement of accounts is Rs. 14,34,492/- The total amount spent on helicopter has been shown as Rs. 1,50,000/. The respondent did not show in the statement of accounts the expenses incurred in holding several meetings in different villages. The respondent also travelled from the place of landing to nearby villages by car and addressed 40 public meetings. The total cost of these meetings comes to Rs. 5,000/- per meeting. The petitioner filed the certified copy of the daily accounts of expenditure vide annexure P-19. The petitioner has stated that the total amount spent on use of helicopter, arrangements of public meetings and preparation of helipads amounted to Rs. 49,30,000/- which is far in excess to the maximum permissible expenses of Rs. 25 lac.

9. In his application under Order 6 Rule 16 of the CPC, (I.A.No. 20/2004), the respondent submitted that the most of the pleadings which are made in the petition are unnecessary, scandalous, frivolous and vexatious to prejudice the fair trial of the petition and otherwise also is abuse of the process of the Court. It is submitted that in paragraph 3 of the Petition, the petitioner alleged thus :—

“..... The helicopter was hired on 27-1-2004, it remain at Chhindwara throughout the period for which it was hired till the election results were declared on 13-5-2004. In the State of M.P., the respondent was the only candidate who had hired Helicopter for the purpose of campaigning in his constituency. The respondent is the only candidate in the entire country who has hired Helicopter on such a large scale for campaigning in his constituency. He had hired the helicopter on 4-2-2004 and continued to use it on hire till 6-5-2004.....”

“..... The respondent even before filing his nomination form on 15-4-2004 started campaigning of the election from 9-4-2004 so that the expenses incurred on the Helicopter for the purposes of election may not be counted towards the expenses of election as specified in Section 77 of the Representation of People Act, 1951. He used to take permission form the Returning Officer for flying and landing in 6 places while in fact, he used to fly 8 to 10 places in the non-authorized places. In view of the conduct of the respondent, the petitioner complained to the Returning Officer that the respondent should be prevented from using the Helicopter on 9-4-2004.....”

10. It is submitted by the applicant/respondent that these pleadings deserve to be struck out as they relate to the period prior to the date of the filing of the nomination by the respondent i.e. 15-4-2004. The period from 27-1-2004 to 15-4-2004 cannot be considered for the purpose of calculating election expenses. Therefore, the pleadings are irrelevant, vexatious and are aimed to prejudice the Court. It is also submitted that there is no law, rule or regulation which prohibits the use of helicopter and by no stretch of imagination the use of helicopter can be termed as violative of any election law or any Model Code of Conduct.

11. This contention is acceptable. Section 77 of the Act speaks of the expenses incurred between the date on which the candidate has been nominated and the date of the declaration of result thereof, both days inclusive. The expenses incurred prior to the date of nomination cannot be considered, therefore, I am of the opinion that the pleadings which have reference to any expenditure prior to the date of the filing of the nomination are irrelevant as a ground to constitute election dispute and are frivolous, unnecessary and irrelevant and deserve to be struck out.

12. Similarly, the Election law does not restrict or prohibit the use of any mode of transport by a candidate whether it be a plane, helicopter, car or any other device. The use of any such mode does not make the fight unequal.

A candidate can use a private mode of travelling, therefore, the plea regarding a complaint of use of helicopter also deserve to be struck out. Therefore, the pleadings “.....the helicopter was hired..... on hire till 6-5-2004” and “The respondent even before prevented from using helicopter on 9-4-04” in paragraph 3 of the petition are liable to be struck out the same being unnecessary and vexatious and tending to prejudice, embarrass or delay the fair trial and the same is ordered to be struck out.

13. It is also stated in the application, (I.A. No. 20/2004), that in paragraph 5 of the petition, the petitioner alleged as under :—

“..... Apart from these, the star campaigner Shri Govinda accompanied the respondent Shri Kamal Nath in the Helicopter hired by the respondent Shri Kamal Nath took off 14 times and landed 14 times on 30-4-2004 and 1-5-2004. He addressed 12 public meetings in different villages.”

14. In respect of these pleadings, Shri Tankha, learned senior counsel submitted that the expenses of the star campaigner are borne by the political parties and name of Shri Govinda appears in party list as the star campaigner. Therefore, these pleadings are unnecessary, irrelevant and vexatious.

15. There is force in this contention also. The star campaigners campaign for the party throughout the country and their expenses are borne by the party, therefore, even if the candidate accompanied the star campaigner the expenditure of the star campaigner cannot be termed as the expenditure of the candidate in connection with the election. It is not the case of the petitioner that the expenses of star campaigner also were borne by the respondent. Therefore, the pleadings in para 5 of the petition “..... Apart from these in different villages” are unnecessary and vexatious and tend to prejudice, embarrass or delay the fair trial of the election dispute. Therefore, the same deserve to be struck out and are ordered to be struck out.

16. Regarding the pleadings in paragraphs 6.1. to 6.16, 15 to 20 and 23 to 26, the counsel for respondent has submitted that the allegations are vague as it has not been pleaded that either the respondent has incurred the expenditure amounting to a particular sum or authorised his agent to incur the same or had authorised any other persons to make the expenditure which the respondent had undertaken to reimburse.

17. It is true that allegations in paras 6.1. to 6.16 and 7 to 19 of the petition are vague allegations with regard to use of the helicopter and what are the standard charges of the helicopter have been mentioned

and it has not been specifically pleaded that the respondent incurred these expenses or that he authorised his election agent to incur these expenditure or that he had authorised any other person to incur these expenses with an undertaking to reimburse these expenditures but the same cannot be said to be scandalous, frivolous or vexatious, therefore, they are not liable to be struck out though they will be considered while deciding the question as to whether the material facts have been pleaded in the petition.

18. Shri Tankha, learned senior counsel appearing for the respondent vehemently submitted that pleading in para 21 of the Election Petition in respect of use of satellite phone are false and vexatious and deserve to be struck out.

19. This contention cannot be said to be bereft of merit. Para 21 of the petition reads thus :—

“ 21. That apart from the use of the helicopter for electioneering and campaigning, the respondent used satellite phones on 4-5-2004 at village Chhindi. The Collector/Returning Officer has prepared the VCD of this event. The petitioner has been supplied the certified copy of the VCD. The VCD is filed herewith as Article-P/17. The cost on use of Satellite/high frequency mobile phone amounts to Rs. 1,00,000/- (Rupees one lac only) approximately. In the village Chhindi, there was no facility of Mobile phone.”

20. These pleadings also appear to be unnecessary and vexatious and tend to embarrass or prejudice and to delay the fair trial of the dispute. The petitioner has nowhere stated that the respondent owns a Satellite phone. No number of such phone has been pleaded. It has also not been pleaded that the Satellite phone was used for the purpose of election. No connection has been pleaded between the talk on the Satellite phone and the election campaign, therefore, the pleadings in para 21 of the petition deserve to be struck out and are ordered to be struck out.

21. Regarding averments in paras 22 to 27 of the petition, Shri Tankha, learned senior counsel appearing for the respondent submitted that they deserve to be struck out as the same are frivolous and vexatious and have been aimed solely to prejudice the court. It has not been specifically pleaded that the respondent had incurred the expenditure amounting to a particular sum or has authorised his agent to incur the same or that he had authorised any other person to make the expenditure which the respondent had undertaken to reimburse.

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22. I am unable to countenance the contention. The pleadings in these paragraphs cannot be said to be frivolous or vexatious, therefore, they are not liable to be struck out though they will be considered while deciding the question as to whether the material facts have been pleaded in the petition.

23. The upshot of the above discussion is that application under Order 6 Rule 16 CPC, I.A. No. 20/2004 filed by the respondent is partly allowed. In terms of the order in paragraphs 12, 15 and 20 the pleadings be struck out.

24. Regarding the affidavit accompanying the election petition learned senior counsel appearing for respondent submitted that Sections 82 and 83 of the Act read with Rule 94 (a) of the Conduct of Election Rules, 1961 (hereinafter referred to as, ‘the Rules’) mandate that an affidavit must be sworn as prescribed in Form 25. The verification and the affidavit submitted by the petitioner do not support the contents of the pleadings by disclosing how and in what way the petitioner has knowledge of the averments and in what circumstances he had received information from any other source who has personal knowledge of the facts.

25. This contention could not impress me. In support of the allegation of corrupt practice the petitioner has submitted the affidavit in prescribed form. The petitioner has disclosed the source of information. Whether the facts stated in the affidavit constitute a complete cause of action or corrupt practice is altogether a different matter which will be considered while deciding the application under Order 7 Rule 11 CPC but it cannot be said that the affidavit is not in the prescribed Form.

26. Shri Tankha, submitted that regarding para 27 of the petition the deponent has stated in the affidavit that the facts therein are true on the basis of legal advise given by the counsel for the petitioner. Counsel submitted that Para 27 of the affidavit reads thus :—“ 27. That, it is submitted that the respondent has incurred election expenses on helicopter and arrangement for public meeting and on preparation of helipads and public stages amounting to Rs. 49,30,000”. According to him, this fact cannot be said to be based on legal advise. Learned counsel for the respondent further submitted that in the affidavit filled the petitioner has supported the contents of the petition on the basis of the information furnished by the returning officer. Such hearsay averments do not constitute admissible material facts to constitute a cause of reply.

27. Regarding the affidavit, the Apex Court in **Ravindra Singh Vs. Janmej Singh** (2000) 8 SCC 191, has observed thus :—

“Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83 (1) of the Act, the election petition leveling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial—the defect being of a fatal nature.”

28. This part of the contention regarding affidavit has some merit. The above referred fact stated in para 27 of the petition cannot be on the basis of legal advice, therefore, to that extent affidavit cannot be said to be proper. It is too vague and not in accordance with the imperative requirements of the proviso to Section 83 of the Act. It is not precise and clear and in view of the law laid down in **Ravindra Singh** (supra) in the absence of proper affidavit in support of corrupt practice the allegations pertaining thereto cannot be put to trial—the defect being of a fatal nature.

29. So far as application under Order 7 Rule 11 C.P.C. read with Sections 82 and 83 of the Act is concerned, Shri Vivek Tankha, learned senior counsel appearing for respondent submitted that where assertions with regard to the use of helicopter and the standard charges of a helicopter per flight hour have been mentioned in the petition it has not been specifically pleaded that either respondent had incurred the expenditure amounting to a particular sum or had authorised his agent to incur the same or that he has authorised any other person to make the expenditure which the respondent had undertaken to reimburse. The pleadings in the petition are in the realm of conjecture that could not satisfy the requirement of the pleadings of material facts. He submitted that the present petition in which vague assertion that a helicopter was used for a specified number of flying hours and that standard charges per flying hour have been made would

not necessarily constitute the material fact that the candidate has spent by way of hiring of the helicopter an amount exceeding the ceiling provided under Rule 90 of the Rules.

30. The counsel submitted that on the face of record the election petition does not disclose or constitute a cause of action for commission of corrupt practice under Section 123(6) of the Act. The petition is bereft of material facts as well as material particular to constitute a legally actionable and maintainable election dispute warranting under the law to prosecute and adjudicate upon. Learned senior counsel in support of his submissions relied on several decisions including **U.S. Shashidharan Vs. S. Karunakaran and another** AIR 1990 SC 924, **K.M. Narayana Vs. R.V. Devraj** AIR 2002 Karnatak 397, **Narayanswamy Vs. C.P. Thirunavukkarasu** AIR 2000 SC 694, **Hardwari Lal Vs. Kanwal Singh** AIR 1972 SC 515, **Samant N. Balkrishna Vs. George Fernandez** AIR 1969 1201, **Lalit Kishore Chaturvedi Vs. Jagdish Prasad Thada** 1990 (Supp) SCC 248, **Dhartipakar Madanlal Vs. Rajeev Gandhi** 1987 (Supp) SCC 93, **Hari Singh Narwariya Vs. Rakesh Shukla** 2002 (1) JLJ 245, **Hari Shanker Jain Vs. Soniya Gandhi** (2001) 8 SCC 233 and **Kamal Nath Vs. Sudesh Verma** (2002) 2 SCC 410.

31. As against this, Shri Kale, learned senior counsel appearing for the petitioner vehemently submitted that the grounds of corrupt practices and the facts necessary to formulate a complete cause of action have been stated in the petition. Even the particulars have been given, therefore, the petition cannot be dismissed at the threshold. Learned senior counsel also submitted that in any case, deficiency in particulars cannot be a ground for dismissing the petition. An election petition is not liable to be dismissed in limine because even if full particulars of corrupt practice alleged are not set out, they can be amplified in evidence. Shri Kale further submitted that the facts which are essential to disclose a complete cause of action only are material facts and are essentially required to be pleaded. On the other hand, particulars or details of the case set up by the party are such pleas which are necessary to amplify, refine or explain material facts. The function of particulars is thus to present a full picture of the cause of action to make the opposite party understand the case that has been set up against him and which is required to meet. Deficiency of material particulars cannot entail the dismissal of the petition for want of material facts. In support of the contention learned senior counsel relied on **Sangram Singh Vs. Election Tribunal, Kotah and another**, AIR 1955 SC 425 and **Sardar Harcharn Singh Barar Vs. Sukhdarshan Singh and others** AIR 2005 SC 22.

32. I have carefully perused Section 83 of the Act. Under this Section an election petition (a) shall contain a concise statement of material facts on which the petitioner

relies (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. It is manifest that the election petition shall not only contain material facts but also set forth particulars of corrupt practice.

33. Some of the principles elaborated in certain judgments cited by the counsel for the respondent and referred above are relevant for our purpose.

34. In *U.S. Shashidharan Vs. K. Karunakeran and another* (Supra) the Supreme Court held as under :—

“It is apparent from clauses (a) and (b) of Section 83 that an election petition shall contain a concise statement of the material facts and also set forth full particulars of any corrupt practice. These two requirements are also mandatory in nature. So whenever there is an allegation of corrupt practice, the election petition shall contain a concise statement as to the material facts on which the petitioner relies and also must set forth full particulars of the corrupt practice alleged by the petitioner.”

35. In *K.M. Narayan* (Supra) the Karnataka High Court held that the averments should not be bald, vague and should disclose material facts.

36. In the case of *V. Narayanswamy* (Supra), the Apex Court has held thus :—

“The existence of material facts, material particulars, correct verification and affidavit are relevant and important when the petition is based on the allegation of corrupt practices and in the absence of those the court has jurisdiction to dismiss the petition. There is no duty cast on the High Court to direct suo moto the furnishing of better particulars and requiring amendment of petition and filing of proper affidavit. In a matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provision of law is on the petitioner.”

37. In *Hardwari Lal V. Kanwal Singh* (Supra) the necessity of clear and precise allegations to support a plea of corrupt practice was emphasized by the Supreme Court by saying that the election petition which does not set out material facts and particulars of corrupt practice so as to furnish a cause of action can be dismissed by virtue of Section 87 of the Act.

38. Reiterating the principle in *Samant N. Balkrishna* (Supra), the Apex Court held thus :—

“Section 83 is mandatory and requires the election petition to contain first a concise statement of material

facts and then requires the fullest possible particulars. The word “material” shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present a full picture of the cause of action with such information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words ‘material facts’ will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. An election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action. Where the allegation is the making of a false statement, that statement must appear and the particulars must be full as to the person making the statement and the necessary information.”

39. In *Dhartipakar Madanlal* (Supra), the Apex Court summed up the statement of law in following words :—

“On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI, Rule 16 CPC. Order VI, Rule 16, itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement; instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the Court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11.”

40. In this judgment of *Dhartipakar Madanlal* Agarwal Supreme Court also came to hold that mere allegation that several jeeps were plying in the constituency and that food was given to the party workers, would not tantamount to an allegation of corrupt practice and,

therefore, the election petition was held to be not maintainable. Explanation 1 to Section 77 in the context of expenditure incurred or authorised by the candidate bears considerable significance inasmuch as voluntary expenditure incurred by friends, relations or sympathizers of the candidate is not required to be included in the candidate's return of expenses unless expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the person, who incurred the expenses.

41. In the case of **Lalit Kishore Chaturvedi** (Supra), the Apex Court, while considering the absence of precise and specific pleading, laid down as under :—

“An election petition filed under Section 81 is required by Section 83(1) to contain concise statement of the material facts on which petitioner relies. Statutory compulsion visualized by Section 83(1)(b) to set forth full particulars of corrupt practice including names of persons, time and place, is to be construed strictly and absence of precise and specific pleading will render an election petition infirm.”

42. In **Harishanker Jain** (Supra), on the aspect of pleading of material facts Supreme Court observed thus :—

“Section 83 (1) (a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as material supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression “cause of action” has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad.”

43. Regarding material facts this Court in **Hari Singh Narwariya** (Supra) observed thus :—

“The words material facts, as enumerated in a Division Bench decision of this Court in case of **Hari Visnu Kamath Vs. Election Tribunal Jabalpur** reported in 1959 A.I.R. 1958 52 I.L.J. 105, make clear as to the purpose of specifying a cause of action in an election petition.

any one ‘Material’ fact is omitted, the statement of claim is bad; it is liable to be struck out. The function of ‘particulars’ is quite different. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial. Thus, the material fact under the Act are what, under the Code of Civil Procedure is, the cause of action which has to be stated with completeness and unless there is a complete cause of action the plaintiff is not entitled to judgment. Indeed the plaintiff can be rejected if it does not disclose a complete cause of action. Where, however, the cause of action involves narration of particulars, those particulars have to be supplied with sufficient clarity and precision. They should not be vague and indefinite.”

44. Regarding the use of satellite phone, learned counsel for respondent submitted that the petitioner nowhere stated that the respondent owns a satellite phone. No number of such satellite phone has been provided in the election petition. Probably a cordless phone has been misconstrued as a satellite phone. There is no basis for the pleadings that the petitioner has incurred an expenditure during the course of election on the use of satellite phone. Without any material fact it has been stated in the election petition that the satellite phone was used for election campaign.

45. The contention is acceptable. The allegations regarding the use of satellite phone are vague. It has not been stated that respondent owns a satellite phone. Number of satellite phone has not been given in the petition. It has not been stated that who was contacted on phone and for what purpose. No connection has been shown between the talk on the telephone and the election campaign, therefore, the expenditure of satellite phone cannot be said to be the amount spent for campaigning and the allegations in this regard are vague and do not constitute a triable issue.

46. Regarding the expenditure of Rs. 5000 for preparation of each helipad the counsel for the respondent submitted that this has been pleaded on the basis of the rate fixed by the Collector, Jabalpur. The counsel submits that the preparation of helipads only requires chalking of a small area as H. The amount of Rs. 5000 has been pleaded on mere conjecture and surmise and without any basis. The helipads could not be prepared by the villagers or party workers therefore, only on the basis of surmise it

cannot be said that for each helipad Rs. 5000 were spent. The Collector's estimate based on conjecture cannot be a substitute for a categorical and clear averment of material facts and particulars of any expenditure incurred or authorised to be incurred by the petitioner. There is no pleading that helipad at Sikarpur was constructed between 15-4-04 to 13-5-2004. How many of the other helipads were prepared during this period has not been pleaded. According to the averments of the petitioner himself the respondent used the helicopter between 27-1-2004 to 15-4-2004 also before filing the nomination. This suggests that certain helipads were prepared prior to the filing of the nomination. The expenditure of this period cannot be included in the expenditure of election as Section 77 of the Act speaks of the expenses incurred between the date on which the candidate has been nominated and the date of declaration of the result thereof both days inclusive. It is not pleaded as to how many helipads were prepared during this period. It is also not pleaded as to how many helicopters were prepared by respondent and how many were constructed by the villagers or Congress Party or party workers. The election petitioner has himself no personal information about the material facts pleaded in the election petition.

47. Regarding the visit of star campaigners namely Shri Govinda and Shri Mukesh Naik, learned counsel for the respondent submitted that their expenses were borne by the party.

48. This contention also has force the star campaigners campaign throughout the country for the Party therefore, their expenses cannot be included while computing the total expenditure of the candidate as such expenses are borne by the party.

49. Regarding the expenses of public meetings also the pleadings are vague. It has not been clarified as to how a sum of Rs. 5000 was spent for each meeting. It has not been pleaded that in every meeting mike was used or dais was prepared or braveries were served. Admittedly, all the meetings were held in villages where large gathering cannot be expected. It is not pleaded that expenses of all the meetings were borne by the respondent. It is not pleaded as to how many meetings were arranged by the respondent and how many meetings were arranged by the party, party workers or villagers. It is also not pleaded as to how many meetings were arranged by the party for star campaigner namely Shri Govinda and Shri Mukesh Nayak. How the magic figure of same amount of Rs. 4,500 or 5,000 for each meeting was arrived at has not been clarified with precision. It is also not pleaded as to how the statement of expenditure submitted by the respondent to the returning Officer was incorrect. The Returning Officer did not question the return of the election expenses submitted by the respondent under Rule 89 of the Rules. It was for the petitioner to give specific details regarding the expenses. The pleadings in this regard are vague. There is no

pleading that these expenses were incurred by the candidate or his agent.

50. The right to challenge an election is not a common law right, but a special right as conferred by the Act. The provision for setting aside the election on the grounds mentioned in Section 100 of the Act including the ground of corrupt practice has been made for the purpose of maintaining purity of elections. An election is the democratic method for selecting the representatives of the people in Parliament or in the Legislative Assembly. When a candidate gets himself elected by adopting or committing any corrupt practice, his election must be set aside on proof of such corrupt practice. At the same time, the procedure prescribed by the Act for challenging an election must be strictly followed. So, if there be any deviation from or non-compliance with the provision of Section 81(3), the Court will have no other alternative than to dismiss the election petition.

51. Applying the ratio of the judgements referred by counsel for both the parties to the facts of the present case, it is clear that the facts pleaded by the petitioner are vague and do not make out allegation of corrupt practice within the ambit of Section 123 (6) of the Act, and as such the election petition is liable to be rejected.

52. Allegation of corrupt practice being quasi criminal in nature, the pleadings require a strict examination. Therefore, there should not be any vagueness in the allegations made which a returned candidate would be required to meet. The cause of action has to be stated with completeness and unless there is complete cause of action the petitioner is not entitled to the judgement. The petitioner has not supplied the material facts with sufficient clarity and precision, they are vague and indefinite.

53. An election petition cannot be entertained to have a fishing and roving inquiry and it is obligatory on the election petitioner to give requisite facts, details and particulars of corrupt practice with exactitude. As such particulars are lacking in the present petition, the same must fail at the threshold.

54. In the present petition vague allegation that a helicopter was used for a specified number of flying hours and standard charges per flying hour was Rs. 50,000 would not necessarily constitute the material fact that the respondent has spent by way of hiring the helicopter an amount exceeding Rs. 25 lac which is a ceiling limit prescribed.

55. There is no averment in the petition that the respondent incurred the expenditure of hiring a helicopter for a specified number of hours. The petitioner did not aver that the respondent infact incurred expenditure beyond the prescribed limit. All that has been stated is that helicopter has been used for a number of hours and the normal rate of hiring a helicopter being in the minimum of Rs. 1.50 lac per day and for one hour the standard flying charges of helicopter was Rs. 50,000 and the helicopter

having been used for a particular number of days and particular number of flying hours the respondent must have required to pay more than the prescribed limit towards the expenses of helicopter.

56. Such facts cannot be assertion of material facts. The facts have been alleged on the basis of hypothesis, surmises and conjectures requiring the Court to draw inference by adopting process of reasoning. The statements of travelling and stoppages at different villages do not constitute in themselves contravention of Section 77 of the Act to constitute a corrupt practice. The expenditure on hiring a helicopter depends on the terms of hire and not on the standard rates. In view of the existing competition amongst various air services the standard charges become redundant. The hire charges can be substantially less if the craft belongs to some friend or relative or the same is hired for a longer period or frequently throughout the year. There is not an iota of facts pleaded by the election petitioner that any expenditure beyond what was declared by the respondent has been incurred by the respondent or his agent on his behalf. What has been pleaded by the petitioner is notional expenditure. The estimate of Collector cannot be a substitute for a categorical and clear averment of material facts and particulars of any expenditure.

57. Earlier also the election of the present respondent in the year 1998 in connection with the dissolved Lok Sabha was challenged in an election petition which was registered as Election Petition No. 3/1998 by one Sudesh Verma. The judgement of that case has been reported in Kamal Nath Vs. Sudesh Verma (2002) 2 SCC 410. In that petition also the election of respondent was impugned on the identical allegations that the helicopter was used for specific number of flying hours and standard charges for each flying hour was Rs. 53,000. It was also alleged that the helicopter had been used for number of hours and the normal rate of hiring a helicopter being in the minimum of Rs. 2,12,000 per day and the helicopter having been used for 14 days, the returned candidate must have required to pay more than the prescribed limit toward the expenses of the helicopter. The Supreme Court held that the facts do not satisfy the requirements of the material facts, I am tempted to quote the following passages from the judgement :—

“ This in our considered opinion cannot be held to be an assertions of the material fact and on the other hand it would be in the realm of conjecture requiring the Court to draw an inference by adopting an involved process of reasoning and that would not satisfy the requirement of the pleading of the material facts.”

“ Having examined the averments.....we have no hesitation to come to a conclusion that the material fact in relation to an allegation

of corrupt practice within the ambit of Section 123 (6) read with Section 77 of the Representation of People Act are lacking and, therefore, the election petition must be held to be not maintainable. In our view the High Court committed error in coming to a conclusion that a triable issue does subsist.....there has been infirmity in the election petition as the material facts in context of the corrupt practice within the ambit of Section 123 (6) read with Section 77 of the Representation of People Act are lacking and such an election petition is liable to be dismissed.”

58. The facts of the present petition being identical. It is squarely covered by the ratio of this judgment of the Apex Court. The allegations of corrupt practice in the present case also are vague. The source of allegation is alleged to be the office of returning officer. The petitioner is merely relying upon certain documents alleged to have been issued from the office of the returning officer. The averments regarding expenditure on helicopter, on preparation of helipads, use of satellite phones and on arrangements of public meetings are neither based upon the personal knowledge of the petitioner nor information received from some one and believed to be true as mandated by law. The allegations are not sufficient in themselves to permit a trial of the election petition. Hearsay averments do not constitute a cause for reply. The expenditure alleged by the petitioner added to the expenditure declared under Section 77 of the Act will cumulatively not constitute a corrupt practice. Mere non-disclosure of the expenditure will not be a corrupt practice but it is incurring of the expenditure in excess of the prescribed amount would be held to be a corrupt practice.

59. I am unable to agree with Shri Kale, learned senior counsel appearing for the petitioner that grounds of corrupt practice and the facts necessary to formulate a complete cause of action have been stated in the petition and the facts necessary to amplify, refine or explain material facts will be proved by evidence during trial.

60. The upshot of the above discussion is that the material facts in relation to the allegations of corrupt practice within the ambit of Section 123 (6) read with Section 77 of the Act is lacking and, therefore, I have no hesitation in coming to a conclusion that the petition is not maintainable and therefore, the same is dismissed.

61. Costs as incurred.

S.L. JAIN, Judge

10-11-2005

[No. 82/MP-HP/15/04]

By Order,

S. K. KAURA, Secy.

आदेश

नई दिल्ली, 7 फरवरी, 2006

आ. आ. 24.—जबकि निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट फरवरी 2005 में हरियाणा विधान सभा के साधारण निर्वाचन के लिए जो स्तम्भ (3) में तदनुस्ती विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, के स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और जबकि उक्त अभ्यर्थीयों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है तथा निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायीचित्य नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए एतद्वारा निर्वाचन व्यक्तियों को विधान व्ययों का कोई भी लेखा दाखिल करने में असफल रहें।

सारणी

क्र. सं.	निर्वाचन का प्रिवरण	निर्वाचन-क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाला अभ्यर्थी का नाम और पता	निरहता का कारण
1	2	3	4	5
1.	हरियाणा विधान सभा 2005 के लिए साधारण निर्वाचन	11-हन्दी	श्री शिव कुमार, गांव गोरगढ़, डा. सिकरी, करनाल, हरियाणा।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहें।
2.	यथा	47-राजौन्द	श्री दिनेश, गांव व डा. बल्ला, जिला—करनाल हरियाणा।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहें।
3.	यथा	49-जुलाना	श्री मुकेश, गांव व डा. किलाजाफगढ़ हरियाणा।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहें।

[सं. 76/हरियाणा-वि.स./2005 (3)]

आदेश से,

के. अजय. कुमार, सचिव

ORDER

New Delhi, the 7th February, 2006

O.N. 24.—Whereas, the Election Commission of India is satisfied that the contesting candidates specified in column (4) of the table below at the General Election to the Legislative Assembly held from Haryana in February, 2005 as specified in column (2) and held from constituencies correspondingly specified in column (3) against their names have failed to lodge account of their election expenses, as shown in column (5) of the table, as required by the Representation of the People Act, 1951, and to Rules made thereunder.

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	Particulars of Election	No. and Name of Assembly Constituency	Name and address of Contesting Candidate	Reasons for Disqualification
1.	General Election to the Legislative Assembly of Haryana-2005	11-Indri	Sh. Shiv Kumar, Vill. Gaurgarh, P.O. Sikri, Karnal, Haryana.	Failure to lodge account of election expenses.
2.	General Election to the Legislative Assembly of Haryana-2005	47-Rajound	Sh. Dinesh, V & P.O. Balla, Distt. Karnal, Haryana.	-do-
3.	General Election to the Legislative Assembly of Haryana-2005	49-Julana	Sh. Mukesh, VPO Kilazafagarh, Haryana.	-do-

[No. 76/HN-LA/2005 (3)]

By Order,

K. AJAY KUMAR, Secy.

आदेश

नई दिल्ली, 7 फरवरी, 2006

आ. अ. 25.—यतः निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ 2 में यथा-विनिर्दिष्ट राजस्थान विधान सभा के साधारण निर्वाचन, 2003 के लिए जो स्तम्भ 3 में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ 4 में विनिर्दिष्ट निर्वाचन लड़ने वाले अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ 5 में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे हैं;

और यतः उक्त अभ्यर्थी ने निर्वाचन आयोग द्वारा सम्बन्धित सूचना दिए जाने पर भी उक्त असफलता के लिए न तो कोई कारण और न ही स्पष्टीकरण दिया है अथवा उनके द्वारा प्रस्तुत अभ्यावेदनों पर, यदि कोई हों, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्ति का संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए एतद्वारा निरहित घोषित करता है:—

सारणी

क्र. सं.	निर्वाचन का विवरण	विधान सभा निर्वाचन-क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरहता के कारण
1	2	3	4	5
1.	विधान सभा निर्वाचन क्षेत्र के लिए साधारण निर्वाचन, 2003	13-बीकानेर	डॉ. दुर्गा गहलोत, अमरसर कुंए के पास, सार्टुल कॉलोनी, बीकानेर, राजस्थान।	लेखा दाखिल नहीं किया

[सं. 76/राज./2003 (11)]

आदेश से,

के. आर. प्रसाद, सचिव

ORDER

New Delhi, the 7th February, 2006

O.N. 25. — Whereas, the Election Commission of India is satisfied that the contesting candidate specified in column 4 of the Table below at the General Election to the Rajasthan Legislative Assembly held in 2003 specified in column 2 and held from the constituency specified in column 3 against his name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951, and the Rules made thereunder.

And whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by him, if any, the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the person specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	Particulars of Election	Sl. No. & Name of Assembly Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
1	2	3	4	5
1.	General Election to the Legislative Assembly, 2003	13-Bikaner	Dr. Durga Gehlot, Near Amarsar Well, Sardul Colony, Bikaner, Rajasthan	Account not lodged

[No. 76/RJ/2003 (11)]

By Order,
K. R. PRASAD, Secy.

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